



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.No.18 of 1997

Mohammed Yousuff

.. Appellant/Defendant-2

vs.

1.Balaganapathy Temple, Nagore,
rep by its Executive Officer,
S.Ramalingam, S/o.Mr.Subramani,
Rettai Kammala Street, Nagore.

.. 1st respondent/Plaintiff

2.The Commissioner,
Nagapattinam Municipality.

.. 2nd Respondent/Defendant-1

Prayer: This second appeal has been preferred against the Judgment dated 21.12.1994, in A.S.No.7 of 1993 passed by the Sub-Court, Nagapattinam, reversing the decree and judgment in O.S.No.259 of 1989 on the file of the District Munsif Court, Nagapattinam, dated 13.12.1991.

For Appellant : Mr.M.Md.Ashoraf Ali

For Respondents : Mrs.K.M.Nalinishree for R1

JUDGMENT

This appeal has been preferred against the decree and judgment in A.S.No.7/1993 on the file of the Court of Subordinate Judge, Nagapattinam. The second defendant in O.S.No.259/1989 on the file of the Court of District Munsif, Nagapattinam, is the appellant herein. The defendants' defence before the Courts below have been negatived on the ground that the patta issued in the name of the plaintiff-temple by the Settlement Tahsildar under The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, is valid.

2. The short facts of the case of the plaintiff, Sri Balaganapathy Temple at Nagore, for the purpose of deciding this appeal sans irrelevant particulars are as follows:-

2(a) The plaintiff-temple is the absolute owner of the plaint schedule property. Its trustee is the competent person to sue or to be sued on behalf of the temple. The suit property is in effective possession and enjoyment of the plaintiff from the year 1911. On



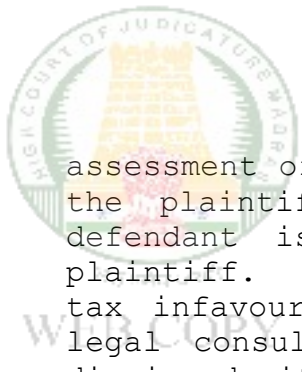
14.11.1967 after full fledged enquiry, the Settlement Tahsildar of Thanjavour have granted patta to the plaintiff. Aggrieved by the order of the Settlement Tahsildar, Thanjavour, passed in R.P.No.350/NGT/67 under Rule 9(3) r/w Section 11(1) of Act 30/63, the second defendant has preferred an appeal in C.M.A.No.64/1974 to the Inam Abolition Tribunal (Sub-Court) at Nagapattinam. The learned Sub-Judge has also dismissed the appeal holding that the order passed by the settlement Tahsildar, Thanjavour, is valid.

2(b) Against the judgment of Sub-Court at Nagapattinam, the second defendant has again filed a revision before the High Court of Judicature at Madras in C.R.P.No.1736 of 1976. The High Court has also dismissed the revision on 03.10.1978 upholding the findings of the Tribunal. The said order is final. The final order of the High Court is binding on the second and first defendants in all force. In short the second defendant can not claim any semblance of right, title and interest in the suit property.

2(c) The suit property is always in possession and enjoyment of the temple. The second defendant was never in possession and enjoyment of the same. Since the plaintiff-temple is the owner of the suit property, the first defendant herein has assessed tax in the name of the temple (plaintiff). The property tax assessment was in the name of the plaintiff for many years. Due to the influence of the second defendant, the first defendant without notice to the plaintiff and without the consent and knowledge of the plaintiff changed the assessment infavour of D2. In fact no enquiry was conducted by the first defendant to alter the assessment in the name of the second defendant. Hence the change of assessment in the name of second defendant is illegal and void abinitio.

2(d) The plaintiff has issued notice to the first defendant calling upon the officer to cancel the assessment made in the name of the second defendant. Having received the same, as usual the Officer has not replied. Finally on 28.08.1987 the first defendant has sent a letter stating to approach court for change of assessment in the name of the plaintiff. Hence the suit for directing the first defendant to change assessment property tax in the name of the temple and to collect the tax from it and for costs.

3. The first defendant has filed a written statement contending that the plaintiff has to prove that he is in possession and enjoyment of the plaint schedule property. This defendant is not aware of the assignment of patta infavour of the plaintiff and also about the appeal and revision filed by the second defendant. The plaintiff never claimed any right in respect of the suit property against this defendant. If patta has been granted infavour of the plaintiff-temple then the plaintiff ought to have filed an application before this defendant even in the year 1978 for transferring the property tax infavour of the plaintiff. The plaintiff without resorting to the above said recourse cannot ask for an order of mandatory injunction in the suit. The second defendant has filed relevant documents to show his right over the suit property before this Defendant. Only on the basis of the documents produced by the second defendant, the



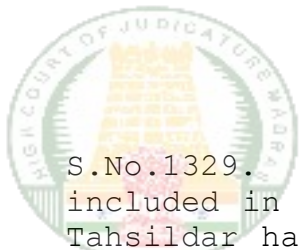
assessment of tax was transferred in the name of the second defendant. If the plaintiff produces relevant documents infavour of him then this defendant is always ready to change the assessment infavour of the plaintiff. This defendant has no objection to transfer the assessment of tax infavour of the plaintiff from the second defendant, after getting legal consultation. A suit for mandatory injunction is liable to be dismissed with costs.

4. 4(a) The second defendant in his written statement would contend that Thiru.S.Ramalingam is not competent to represent the plaintiff-temple. The said Ramalingam is not the trustee of the plaintiff-temple. The plaintiff has to prove that Ramalingam is the trustee of the temple. The plaintiff-temple is being administered by Hindu Religious and Charitable Endowment Board. The suit property does not belong to the plaintiff-temple. The allegation that the plaintiff is in possession and enjoyment of the plaint schedule property from the year 1911 is false. At no point of time the plaintiff was in possession and enjoyment of the suit property. This defendant is in possession and enjoyment of the suit property.

4(b) The contentions of the plaintiff that the assessment of tax by the first defendant infavour of the second defendant is not maintainable, cannot be sustainable. The plaintiff has not paid proper court fees in the plaint and he has no cause of action to the suit. If the plaintiff requires the property tax for the suit property in the name of the plaintiff then he ought to have approached the appropriate Court for seeking redressal. Without resorting to such a course, the suit filed by the plaintiff is not maintainable. The plaint schedule property belonged to the second defendant.

4(c) The second defendant and his predecessors in title were in possession and enjoyment of the suit property continuously for more than 50 years. The second defendant has purchased the suit property on 03.09.1973 from the previous owner Shake Mohamed and registered a sale deed and the second defendant is in possession of the suit property from the date of the said sale. The said vendor of the second defendant viz. Shake Mohamed had purchased the plaint schedule property on 11.02.1967 from one Appavu Chettiar, who in turn had purchased the suit property from one Natarajan, Mettupalayam, on 15.5.1963. Hence, the plaintiff is not entitled to claim any right or title in respect of the suit property. On 14.11.1967 Settlement Tahsildar has not granted any patta infavour of the plaintiff. The Settlement Tahsildar has given patta in respect of T.D.No.718 alone. The above said T.D.No.718 is relating to S.No.2583 and S.No.2587. The suit property S.No.1329 is not included in T.D.No.718. So on the basis of that patta, the plaintiff cannot claim any right or title in respect of the suit property. Against the order of the Settlement Tahsildar, this defendant has preferred C.M.A.No.64/1974 and the same was also dismissed.

4(d) Against the said order of dismissal, the second defendant has preferred a revision before the High Court, which was also dismissed, but in the said case T.D.No.718 has been wrongly mentioned as including



S.No.1329. Only later this defendant came to know that S.No1329 is not included in T.D.No.718. Hence, it cannot be presumed that the Settlement Tahsildar has assigned patta infavour of the plaintiff in respect of the suit property. This defendant is in possession and enjoyment of the suit property for more than the statutory period. This defendant has filed a suit O.S.No.144/1985 and obtained a decree. Hence the suit is liable to be dismissed with costs.

5. On the above pleadings the learned trial Judge has framed ten issues for trial. On the side of the plaintiffs P.W.1 to P.W.3 were examined and Ex.P.1 to P.4 were marked. On the side of the defendant D.W.1 was examined and Ex.B.1 to B.19 were marked. After going through the oral and documentary evidence the learned trial judge has come to the conclusion that the plaintiff is not entitled to any relief in the suit and consequently dismissed the suit with costs. Aggrieved by the findings of the learned trial Judge, the plaintiff preferred A.S.No.7/1992 before the Sub-Court, Nagapattinam, who has allowed the appeal thereby decreeing the suit as prayed for in the plaint. Aggrieved by the findings of the learned first appellate Court, this second appeal has been preferred by the second defendant.

6. The substantial questions of law involved in this second appeal are as follows:-

(i) Whether the title of plaintiff decided by the appellate Court is sustainable, when the suit prayer itself is for changing the assessment of suit property in the name of plaintiff?

(ii) Whether the judgment of the lower appellate Court is liable to be set aside for want of correlation of the suit property with Ex.B.3 to Ex.B.12 and when the suit survey number is not comprised in T.D.No.718 under which the plaintiff claimed title?

7. The points:-

7(a) The learned counsel for the appellant relying on Ex.B.3 to B.12 would contend that the second defendant has right and title in respect of the suit property. Ex.B.12 is the sale deed infavour of the second defendant. Item No.2 to 'A' Schedule to Ex.B.12 is the suit survey number property. Ex.B.3 is the earliest document in respect of the suit property. With regard to the suit property under Rule 9(3) and Section 11(1) of The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, patta has been issued infavour of the plaintiff-temple under Ex.A.3. The said order was passed on 14.11.1967 as seen from Ex.A.3. Section 11(1) of The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, reads as follows:-

"The Assistant Settlement Officer shall, subject to the provisions of sub-section(2), inquire into the claims of any person for a ryotwari patta under this Act in respect of any inam land and decide in respect of which land the claim should be



allowed."

A reading of Ex.A.3-order will go to show that the suit land T.S.No.1329 measuring 0.41029 sq feet is the Devadayam/Dharmadayam inam covered by T.D.No.718 and granted with iruwaram rights to the support of Sri Bala Ganapathy Pillayar temple at Nagore and as per Section 13(1) of The Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, an order has been passed infavour of the plaintiff-temple. As per the said order, the plaint schedule property belongs to the plaintiff. The very order was challenged by D.W.2. Ex.A.4 is the judgment in CMA.No.64/1974 preferred against the order passed in Ex.A.3-order. The CMA was preferred by the second defendant. Relying on Ex.B.12 dated 3.9.1973 the second defendant has contended in CMA proceedings that the suit land is a patta land and not a ryotwari inam land. The said contention of the appellant/D2 was negatived on the ground that Ex.B.12-sale deed has been obtained by D2, six years after the order passed in Ex.A.3-settlement proceedings dated 14.11.1967, he has clandestinely executed Ex.B.12-sale deed dated 3.9.1973 infavour of the second defendant. So holding that the appellant is not entitled to any ryotwari patta CMA.64/1974 preferred by the appellant was dismissed. Against the judgment in Ex.A.4 a revision was preferred by the second defendant in CRP.No.1736/1976 before this Court. Ex.A.5 is the order passed in CRP.No.1736/1976 passed by this Court confirming the judgment in CMA.No.64/1974. The said CRP was dismissed both on merit as well as the question of its maintainability.

7(b) The learned counsel appearing for the appellant relying on 1998(2) LW 189 (Srinivasan and 6 others Vs. Sri Madhyarjuneswaraswami, Pattavaithalai, Thiruchirapalli Dist.), and contended that even in Second Appeal this Court can go into the title of the appellant on the basis of documentary evidence. Relying on Ex.B.18, he has contended that only T.D.No.718 comprised in S.Nos.2583, 2585, 2587, the land was shown as inam description and the inam was infavour of the plaintiff-temple. But in Ex.A.4-order is to the effect that only in respect of the Town S.No.1329 measuring 0.41029 sq feet, the Settlement Tahsildar has initiated proceedings and passed an order under Section 11(1) of Act 30/63. In Ex.A.4 proceedings the appellant has not raised such a contention at all. So the dictum in 1998(2) LW 189 will not be applicable to the present facts of the case. The first appellate Court has dealt with the above points extensively and has come to the correct conclusion that the plaintiff is entitled to the relief as prayed for, which does not warrant any interference from this Court. Points are answered accordingly.



8. In fine, the second appeal is dismissed confirming the judgment in A.S.No.7 of 1993 on the file of the Court of Subordinate Judge, Nagapattinam, with costs.

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Asst. Registrar.

/true copy/

Sub Asst. Registrar.

SSV

To,

1. The Subordinate Judge, Nagapattinam.[with records]
 2. The District Munsif, Nagapattinam.
 3. The Record Keeper, VR Section, High Court, Madras.
- + 1 CC To Mr. M.Md.Ashraf Ali, Advocate SR NO.6749

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